Filed 1/15/19 P. v. Dhillon CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. SUNDEEP DHILLON, Defendant and Appellant.	F072663 (Super. Ct. No. 14CR-00249A) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Merced County. Ronald W. Hansen, Judge. (Retired Judge of the Merced Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Sally Espinoza, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Poochigian, Acting P.J., Smith, J. and Meehan, J.

Defendant Sundeep Dhillon was subjected to a warrantless search of his residence based on the searching officer's erroneous belief defendant was on "searchable" probation. Following the denial of his motion to suppress evidence, defendant pled no contest to various offenses. Defendant's appointed appellate counsel asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We sent a letter to defendant, advising him of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. Defendant responded with a supplemental brief in which he contended the magistrate erred in applying the good faith exception to deny defendant's motion to suppress. Defendant argued that because the motion should have been granted, defense counsel was ineffective for failing to renew the motion in the superior court to preserve the issue for appeal. We ordered appellate counsel and the People to brief the issues raised by defendant in his supplemental brief and also to address the issue of whether the officer who searched defendant's residence had adequate advance knowledge of a search condition such that the search could be justified as a probation search. We have received supplemental briefing on these issues from the parties. We conclude the officer had an objectively reasonable belief defendant was on probation and subject to a search condition, and thus the good faith exception applied and the magistrate properly denied the motion to suppress. Accordingly, we affirm.

PROCEDURAL AND FACTUAL SUMMARY

Defendant was charged with various offenses on November 12, 2014. On November 25, 2014, he raised a motion to suppress evidence based on the warrantless search of his residence (Pen. Code, § 1538.5).[1] On August 31, 2015, a combined preliminary hearing/hearing on the motion to suppress was held before the magistrate, and the following facts were elicited: Merced Police Officer Ramon Ruiz testified that

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[1] All statutory references are to the Penal Code unless otherwise noted.

on November 7, 2014, he received information that defendant possessed illegal weapons and marijuana. Ruiz set up a surveillance of defendant's residence. Ruiz approached the residence and spoke to defendant's girlfriend, who told him defendant was at the store. Ruiz believed the girlfriend knew defendant was on probation. She said defendant had not informed probation of his address.

Ruiz contacted police dispatch, which conducted a warrant and probation/parole status check of defendant. Dispatch informed Ruiz that defendant was on felony probation out of Sacramento with a discharge date in 2016. Defendant had not been transferred to Merced's probation. Dispatch did not mention whether defendant was subject to search and seizure. Ruiz believed defendant was on probation based on the information he received from dispatch.

Ruiz testified that when an officer put a call into dispatch, the subject was run through several databases—local, state, and national—including the NCIC, the FBI's National Crime Information Center.[2] The prosecution introduced an NCIC document dated November 7, 2014, showing a hit on defendant. (Exhibit 2.) It stated that he had been convicted under Health and Safety Code section 11359, and had begun probation on July 15, 2011, with a discharge date of July 14, 2016, in Sacramento County. There was no mention of a search condition.[3]

Ruiz said the procedure he followed was his department's standard procedure and general practice for checking a subject's probation status, and this was the procedure he

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[2] Ruiz thought NCIC might stand for National Criminal Intelligence Center. We take judicial notice on our own motion that the FBI's website describes the database as the National Crime Information Center. (https://www.fbi.gov/services/cjis/ncic, as of January 15, 2019.)

[3] The prosecution also introduced a CLETS (California Law Enforcement Telecommunications System) rap sheet as Exhibit 1. This document was also dated November 7, 2014.

had followed throughout his almost-13-year career. He made these calls to dispatch 10 to 20 times per shift. The only time this procedure failed was when, for some reason, a county failed to note someone's probation status in its own database. Most of the probationers Ruiz dealt with were out of Merced County, but some were from other counties. Ruiz stated that an officer running defendant's name through the national database would still, at the time of the hearing, get the information that defendant was currently on probation out of Sacramento County.

When officers stopped defendant and returned him to the residence, defendant told Ruiz he was not on probation anymore. He said he had not reported his address to probation because he did not believe he was still on probation. After receiving this information, Ruiz did not contact the Sacramento County probation department to verify defendant's probation status because it was after business hours. Ruiz also did not contact the Sacramento County police department because he had "never had a hit state that somebody[was] on probation two years out and they weren't on probation." He did not contact Sacramento to ask whether a probation search could be conducted.

Ruiz also did not investigate whether defendant's probation status included a search condition. He testified that the officers "didn't look into that, and that[was] based off of experience" that "[i]n the thousands of probationers and parolees [he had] contacted, [he didn't] believe [he had] ever had one that was not subject to search and seizure." Defense counsel asked, "Really? How long have you been a police officer again?" Ruiz answered, "Almost 13 years." Counsel asked, "And you've never come across one that's not been on search and seizure?" Ruiz answered, "Never." Counsel asked, "So you didn't bother to check whether he was, in fact—whether [there] was a [search and seizure] term, correct?" Ruiz answered, "Correct." Counsel asked, "Because the information that you got—did dispatch tell you that he was on search and seizure?" Ruiz answered, "No, they said he was on felony probation."

Ruiz testified that officers do not need a probation officer's permission to search a probationer's residence. Defense counsel asked, "And that's when search and seizure is a term of their probation, correct?" Ruiz answered, "Correct." Counsel continued, "All right. If they're not on search and seizure, you're not able to do that, correct?" Ruiz answered, "Yeah. Yeah, unless you had other means."

After Ruiz spoke with dispatch, and determined that defendant resided there, Ruiz planned to enter the residence to conduct a probation search. He and a few other officers then entered defendant's residence without a warrant and conducted the search. They found marijuana, marijuana plants, weapons, and cash.

After hearing the above evidence, the magistrate discussed the following and then denied the motion.

> "THE COURT: … [Defendant] was not on probation at the time of the search, and therefore the search did violate his 14th Amendment rights to be free [from] search and seizure.
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> "The issue in this case is whether the exclusionary rule should apply. And the People have the burden of proof to show that there would have been a good-faith objective reasonable justification to believe that a search and seizure condition was in existence. Officer Ruiz checked with dispatch. And based on his 13 year[s'] experience—training and experience, dispatch checks the following sources[:] local source of information; a state source of information; and a national source of information—those three different databases—and are advised.
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> "[W]ith respect to the state source of information, [the] People have offered Exhibit 1, which is the CLETS report. And this is dated November 25th, 2014, the date it was run.[4] And with respect to the Sacramento case, it shows that on July 15th, 2011, he was convicted of possession of marijuana for sale, placed on 5 year[s'] probation, serve[d] a year in jail, fine, fine[,] S-S. S-S in the Court's mind means search and seizure.

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4 This document appears to have been run on November 7, 2014, the date defendant was arrested. We do not understand the magistrate's references to November 25, 2014, which was the date defendant filed his suppression motion. It is possible the magistrate intended to refer to November 7, 2014.

"[DEFENSE COUNSEL]: Judge, I don't believe the officer said that that was a document or information that he—

"THE COURT: He didn't have. I'm just telling you. The database that the dispatch—this is a database. I assume—well, CLETS is a state database, okay? Officer Ruiz says according to his training and experience, dispatch checks the local, the state, and national database for probation and parole searching[, s]o the State database shows—contains this information.

"It also contains the following additional information, that on April 28th, 2014, a few months prior to this particular search, it says dispo, probation violation[, probation] revoked and reinstated with sentence modification. Five year[s'] probation. Thirty days in jail. Nowhere in the State database, at least what's been offered by the People, does it indicate that probation was ever terminated.

"The NCI[C] document, which was run today—it would be more helpful if it was run on November 25th of 2014—really not very helpful. It just says he's on probation out of Sacramento. It does not contain any terms and conditions of probation, whether there's search and seizure.

"The fact that the—there's no indication in the CLETS system that probation was ever terminated indicates that it was—that a Sacramento clerk entered the necessary information and that it was not—this mistake was not a cause by the law enforcement agency or a particular arm of [a] law enforcement agency, such as probation or—I don't think probation makes entries directly into CLETS. I don't think. I think it has to come from the clerk.

"[DEFENSE COUNSEL]: I believe that's correct, Judge.

"THE COURT: Right. So, you know, I cannot—I believe that there was a good-faith belief that there was a search and seizure condition, that the mistake was not the product of any law enforcement agency's conduct, but was more likely the result of a clerk failing to make the necessary entry on the termination of probation; therefore, the exclusionary rule will not apply. The motion to suppress[] is denied."

On September 22, 2015, defendant pled no contest to possession of a firearm by a felon (§ 29800, subd. (a)(1); count 1), child endangerment (§ 273a, subd. (a); count 2), and cultivating marijuana (Health & Saf. Code, § 11358; count 4). The same day, the trial court sentenced defendant to three years eight months in prison.

On November 3, 2015, defendant filed a notice of appeal.

DISCUSSION

Defendant contends he received ineffective assistance of counsel because defense counsel failed to renew the motion to suppress, resulting in the forfeiture of his right to challenge the denial of the motion on appeal (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896-897 [under § 1538.5, subd. (m), a motion to suppress must be made in the superior court to preserve the claim for review on appeal].) He claims the magistrate erred in denying the motion because the good faith exception applied. Defendant argues the exception does not apply to erroneous information generated by a clerk who is an adjunct to law enforcement. Defendant further contends the search of his residence could not be justified as a proper probation search because Ruiz did not have advance knowledge of a search condition.

The People counter that the good faith exception applied pursuant to *Herring v. United States* (2009) 555 U.S. 135 (*Herring*), and that even though Ruiz did not have advance knowledge of a search condition such that the search could be justified as a proper probation search, Ruiz acted in reasonable reliance on information he received concerning defendant's probationary status.

I. Ineffective Assistance of Counsel

To establish ineffective assistance of counsel, a defendant must show (1) counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient performance was prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688 (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 216-217 (*Ledesma*).) On review, we can adjudicate an ineffective assistance claim solely on the issue of prejudice, without determining the reasonableness of counsel's performance. (*Strickland*, at p. 697; *Ledesma*, at pp. 216-217; *People v. Hester* (2000) 22 Cal.4th 290, 296-297.)

To establish prejudice, the defendant must make a showing "sufficient to undermine confidence in the outcome" that but for counsel's deficient performance there was a "reasonable probability" that "the result of the proceeding would have been different." (*Strickland, supra,* 466 U.S. at p. 694; *Ledesma, supra,* 43 Cal.3d at pp. 217-218.) "It is not sufficient to show the alleged errors may have had some conceivable effect on the trial's outcome; the defendant must demonstrate a 'reasonable probability' that absent the errors the result would have been different." (*People v. Mesa* (2006) 144 Cal.App.4th 1000, 1008.) Counsel's failure to make a futile or unmeritorious motion is not ineffective assistance. (*People v. Price* (1991) 1 Cal.4th 324, 387.)

II. Reasonableness of Search

"In reviewing the denial of a motion to suppress evidence, we view the record in the light most favorable to the [magistrate's] ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence. We then decide for ourselves what legal principles are relevant, independently apply them to the historical facts, and determine as a matter of law whether there has been an unreasonable search [or] seizure." (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922; *People v. McDonald* (2006) 137 Cal.App.4th 521, 529 ["We judge the legality of the search by 'measur[ing] the facts, as found by the trier, against the constitutional standard of reasonableness.' "].) (*Herring, supra,* 555 U.S. at p. 147, fn. 5; *People v. Robinson* (2010) 47 Cal.4th 1104, 1126.) "We may sustain the [magistrate's] *decision* without embracing its *reasoning*." (*People v. McDonald, supra,* at p. 529.) Thus, we may affirm the ruling on defendant's motion if it is correct on any theory of the law applicable to the case, even if the ruling is based on an incorrect reason. (*Ibid.*)

"Under California law, issues relating to the suppression of evidence derived from police searches and seizures must be reviewed under federal constitutional standards." (*People v. Robles* (2000) 23 Cal.4th 789, 794.) "The Fourth Amendment to the federal Constitution guarantees against unreasonable searches and seizures by law enforcement

and other government officials." (*People v. Parson* (2008) 44 Cal.4th 332, 345, fn. omitted.) " 'It is a "basic principle of Fourth Amendment law" that searches and seizures inside a home without a warrant are presumptively unreasonable.' " (*People v. Thompson* (2006) 38 Cal.4th 811, 817, quoting *Payton v. New York* (1980) 445 U.S. 573, 586.) When police conduct a search or seizure without a warrant, the prosecution has the burden of showing the officer's actions were justified by an exception to the warrant requirement. (*People v. Simon* (2016) 1 Cal.5th 98, 120.)

One exception is a search conducted pursuant to a probation search condition. "[A] probationer who has been granted the privilege of probation on condition that he submit at any time to a warrantless search may have no reasonable expectation of traditional Fourth Amendment protection." (*People v. Mason* (1971) 5 Cal.3d 759, 765, fn. omitted, disapproved on another ground in *People v. Lent* (1975) 15 Cal.3d 481, 486, fn. 1.) Thus, " 'when [a] defendant in order to obtain probation specifically agree[s] to permit at any time a warrantless search of his person, car and house, he voluntarily waive[s] whatever claim of privacy he might otherwise have had.' " (*People v. Ramos* (2004) 34 Cal.4th 494, 506; see *People v. Bravo* (1987) 43 Cal.3d 600, 607.) The consent is a "complete waiver of that probationer's Fourth Amendment rights, save only his right to object to harassment or searches conducted in an unreasonable manner." (*People v. Bravo, supra,* at p. 607.) Nevertheless, "searches that are undertaken pursuant to a probationer's advance consent must be reasonably related to the purposes of probation. [Citations.] Significantly, a search of a particular residence cannot be 'reasonably related' to a probationary purpose when the officers involved do not even know of a probationer who is sufficiently connected to the residence. Moreover, if officers lack knowledge of a probationer's advance consent when they search the residence, their actions are wholly arbitrary in the sense that they search without legal justification and without any perceived limits to their authority." (*People v. Robles, supra,* 23 Cal.4th at p. 797.) In other words, officers must have knowledge of a search

condition prior to conducting the search. (*People v. Sanders* (2003) 31 Cal.4th 318, 332; *In re Jaime P*. (2006) 40 Cal.4th 128, 132-133.)

If the prosecution cannot meet the burden of demonstrating a legal justification for a warrantless search, the exclusionary rule generally requires the suppression of evidence obtained from the search. (*Wong Sun v. United States* (1963) 371 U.S. 471, 487-488; *People v. Suff* (2014) 58 Cal.4th 1013, 1053.) "The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." (*Arizona v. Evans* (1995) 514 U.S. 1, 10.) This is why the reasonableness of a search "must be determined based upon the circumstances known to the officer when the search is conducted"; otherwise, the test would be inconsistent with "the primary purpose of the exclusionary rule—to deter police misconduct." (*People v. Sanders*, *supra*, 31 Cal.4th at p. 332.)

For this reason, exclusion is not a necessary consequence of a Fourth Amendment violation; rather, it applies only where it results in "appreciable deterrence" to police misconduct. (*Herring*, *supra*, 555 U.S. at p. 141.) "Indeed, [the Supreme Court has stated,] exclusion 'has always been our last resort, not our first impulse,' [citation], and our precedents establish important principles that constrain application of the exclusionary rule." (*Id*. at p. 140, quoting *Hudson v. Michigan* (2006) 547 U.S. 586, 591.)

III. Good Faith Exception

In *United States v. Leon* (1984) 468 U.S. 897 (*Leon*), the United States Supreme Court created the good faith exception to the exclusionary rule. The court concluded that the exclusionary rule did not apply to evidence obtained in objectively reasonable reliance on a search warrant that was issued by a neutral and detached magistrate but later determined to be invalid. (*Id.* at p. 905.) The court stressed that suppressing the seized

evidence would not serve the rule's purpose of discouraging police misconduct.[5] (*Id.* at pp. 921-922.) The court noted that the exclusionary rule was designed "to deter police misconduct rather than to punish the errors of judges and magistrates." (*Id.* at p. 916.) As for the effect exclusion would have on police conduct, the court explained: "[W]here the officer's conduct is objectively reasonable, 'excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that … the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty.' " (*Id.* at pp. 919-920.) The court held that the "marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." (*Id.* at p. 922; see *Illinois v. Krull* (1987) 480 U.S. 340 [the good faith exception applies when an officer conducts a search in objectively reasonable reliance on the constitutionality of a statute that subsequently is declared unconstitutional].)

Since *Leon*, the United States Supreme Court has continued to examine and refine the good faith exception. In *Arizona v. Evans*, *supra*, 514 U.S., the court held that the good faith exception applied when the erroneous information was generated by court employees. (*Id.* at p. 16.) In that case, an officer entered the defendant's name into a computer terminal during a traffic stop and received notice of an outstanding arrest warrant. While arresting the defendant, the officer found marijuana in the car. It was

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5 "[T]he term 'good faith exception' may be somewhat of a misnomer, because the exception focuses on the objective reasonableness of an officer's conduct. [Citations.] Nevertheless, we use the term because of its common acceptance by commentators and courts, including the high court itself." (*People v. Willis* (2002) 28 Cal.4th 22, 29, fn. 3 (*Willis*); see *Herring, supra,* 555 U.S. at p. 145 ["[t]he pertinent analysis of deterrence and culpability is objective, not an 'inquiry into the subjective awareness of arresting officers' "]; *id*. at p. 142 [in an earlier decision, "[w]e (perhaps confusingly) called this objectively reasonable reliance 'good faith' "].)

later learned that the arrest warrant had been quashed 17 days before the arrest. When the justice of the peace had ordered the warrant quashed, the court clerk failed to notify the sheriff's office that the warrant had been quashed, as standard court procedure required. (*Id.* at pp. 4-5.)

The United States Supreme Court concluded that applying the exclusionary rule to a situation in which erroneous information had been generated by court employees was contrary to the reasoning of *Leon*: "If court employees were responsible for the erroneous computer record, the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction. First, as we noted in *Leon*, the exclusionary rule was historically designed as a means of deterring police misconduct, not mistakes by court employees. [Citations.] Second, respondent offers no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion. [Citations.] … [¶] Finally, and most important, there is no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed. Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, [citation], they have no stake in the outcome of particular criminal prosecutions. [Citations.] The threat of exclusion of evidence could not be expected to deter such individuals from failing to inform police officials that a warrant had been quashed. [Citations.] [¶] If it were indeed a court clerk who was responsible for the erroneous entry on the police computer, application of the exclusionary rule also could not be expected to alter the behavior of the arresting officer …. There is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record. Application of the *Leon* framework supports a categorical exception to the exclusionary rule for clerical errors of court employees." (*Arizona v. Evans, supra*, 514 U.S. at pp. 14-16.)

In the present case, defendant first argues that the prosecution failed to establish that a court clerk, rather than law enforcement, made the error of failing to update the database to show that defendant's probation had terminated, and thus the magistrate erred in concluding the exclusionary rule did not apply. We agree there was no evidence supporting the magistrate's conclusion that a court clerk was the source of the error.

Defendant next argues that even if it *was* a court clerk who made the mistake, that clerk was acting as an adjunct to law enforcement and the exclusionary rule should apply. To support this argument, defendant cites *Willis, supra,* 28 Cal.4th 22 and *People v. Ferguson* (2003) 109 Cal.App.4th 367 (*Ferguson*). *Willis* concluded that "CDC [(California Department of Corrections)] clerks responsible for preparing or updating the parole list are adjuncts to the law enforcement" and the deterrent effect of excluding evidence is sufficient to justify application of the exclusionary rule. (*Willis, supra,* at p. 44; *Ferguson, supra,* at p. 376 [following *Willis*; exclusion where error was made by clerical staff at county probation department].)

Willis and *Ferguson*, however, predate the United States Supreme Court's 2009 decision in *Herring*, which held that the good faith exception applies even to erroneous information maintained and provided by law enforcement. (*Herring, supra*, 555 U.S. at p. 145.) *Herring* applied the good faith exception to a search performed by officers who acted in objectively reasonable reliance on incorrect information regarding an arrest warrant from a law enforcement computer database. (*Id.* at pp. 136-137.)

In that case, officers in one county arrested the defendant based on a warrant listed in a neighboring county's computer database. The defendant was searched incident to arrest, and the officers found drugs and a gun. It was subsequently discovered that the warrant had been recalled months earlier, although that information was never entered into the county's database. (*Herring, supra,* 555 U.S. at pp. 137-138.)

Acknowledging the error was due to police negligence, the United States Supreme Court upheld the denial of the suppression motion. (*Herring, supra*, 555 U.S. at p. 147.)

The court assessed the culpability of the officers and the usefulness of excluding the evidence in deterring future police misconduct, concluding: "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." (*Id.* at p. 144.) "In a case where systemic errors were demonstrated, it might be reckless for officers to rely on an unreliable warrant system." (*Id.* at p. 146 [" 'Surely it would *not* be reasonable for the police to rely … on a recordkeeping system … that *routinely* leads to false arrests.' "].) But where "police mistakes are the result of negligence …, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not 'pay its way.' [Citation.] In such a case, the criminal should not 'go free because the constable has blundered.' " (*Id.* at pp. 147-148.) The court emphasized, however, that under the good faith exception, the police must have acted " 'in objectively reasonable reliance' " on the factually incorrect information. (*Id.* at pp. 142, 146.) We are " 'confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal' in light of 'all of the circumstances.' [Citation.] These circumstances frequently include a particular officer's knowledge and experience, but that does not make the test any more subjective than the one for probable cause, which looks to an officer's knowledge and experience, [citation], but not his subjective intent, [citation]." (*Id.* at pp. 145-146.)

Here, we conclude the good faith exception applied under *Herring* even if law enforcement (or an adjunct to law enforcement) was responsible for the failure to update the database. The record supported the conclusion that the error was an isolated act of negligence, not the result of systemic or recurring negligence, or of a deliberate, reckless, or grossly negligent disregard for defendant's Fourth Amendment rights.

Ruiz testified he had never seen an error like this in his 13-year career, where the database indicated a subject had two more years of probation to serve but was in fact not on probation at all. Ruiz had a long history of receiving accurate information from dispatch, and thus it was objectively reasonable for him to rely on the information that defendant was on felony probation with a discharge date in 2016.

To justify the search, however, Ruiz required not only knowledge that defendant was on probation, but also knowledge that he was subject to a search condition. Ruiz explained that during his 13 years of encountering thousands of probationers and parolees, he had never once encountered a probationer who was not subject to a search condition as a term of his or her probation. Accordingly, Ruiz's extensive experience provided him knowledge of facts that gave him an objectively reasonable basis for believing defendant's probation included a search condition.[6]

We conclude substantial evidence supported the findings that Ruiz had an objectively reasonable belief that defendant was on searchable probation. Thus, the good faith exception to the exclusionary rule applies, and the magistrate properly denied the suppression motion. For these reasons, we conclude it is not reasonably probable the

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6 "While hindsight tells us [Ruiz] might have undertaken additional investigation after [defendant] told him [he was no longer on probation], the question under *Leon* is not whether further investigation would have been possible, but whether a reasonable officer in the situation here would have believed that the [computer database] probation and search [information] for [defendant] was in error." (*People v. Downing* (1995) 33 Cal.App.4th 1641, 1656, fn. omitted.) [¶] "We simply cannot say on this record that an objective and reasonable officer would have 'known, or should have known' that the [computer data were] in error …. In this fast-paced, computerized society, it is absurd to require a police officer to exhaust all avenues of investigation and corroboration when he has no objective reason to question facially valid computer data produced by other than the collective law enforcement department in front of him." (*Id*. at pp. 1656-1657, fn. omitted.) In the absence of any conscious effort by the officers or their affiliates to violate the Fourth Amendment, there was no police activity to deter; the benefit of applying the exclusionary rule here would therefore be " 'marginal or nonexistent.' " (*Herring, supra*, 555 U.S. at p. 146.)

superior court would have granted defendant's suppression motion if counsel had renewed it. Accordingly, defendant suffered no prejudice from the failure to renew the motion, and thus he has not suffered ineffective assistance of counsel.

DISPOSITION

The order denying the suppression motion is affirmed.